IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. [redacted]21

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), An Unincorporated Labor Organization, and MICHAEL VOLK, An Individual,
Petitioners,
vs.
PAUL S. RUSSELL,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

PETITIONERS' APPENDICES

HAROLD A. CRANEFIELD, General Counsel,
KURT L. HANSLOWE, Asst. General Counsel,
International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, ALF-CIO,
8000 East Jefferson Avenue,
Detroit 14, Michigan,
Counsel for Petitioners.

THOMAS S. ADAIR,
J. R. GOLDTHWAITE, JR.,
1431 Candler Building,
Atlanta 3, Georgia;
SHERMAN B. POWELL,
Second Avenue and Grant Street,
Decatur, Alabama,
Of Counsel.

INDEX TO APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 427

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), An Unincorporated Labor Organization, and MICHAEL VOLK, An Individual,
Petitioners,
vs.
PAUL S. RUSSELL,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

PETITIONERS' APPENDICES

APPENDIX A

Part A

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States:

Art. 1, Sec. 8, Clauses (3) and (18):
Art. VI, Clause (2):

"Art. I, Sec. 8. (Powers of Congress.) The Congress shall have Power—

"(3). To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

* * *

"(18). To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

"Art. VI. Clause 2. Supreme Law.—

"(2). This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Part B

STATUTES INVOLVED

Labor Management Relations Act, 1947,

and

National Labor Relations Act, as Amended
61 Stat. 140 ff, 29 U. S. C.

Section 141 (b), Section 157, Section 158 (b) (1) and (2), Section 160 (a), (c), and (j), Section 163, Section 185 (a), Section 187 (b):

"Sec. 141 (b). * * *

"It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their rela-

tions affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

"Sec. 157. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

"Sec. 158 (b). It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of sub-section (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;"

"Sec. 160:

"(a) The Board is empowered, as hereinafter provided to prevent any person from engaging in any unfair labor practice (listed in Section (8)) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provisions of this Act or has received a construction inconsistent therewith.

* * *

"(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor or-

ganization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

* * *

"(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper."

"Sec. 163. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to

strike, or to affect the limitations or qualifications on that right."

* * *

"Sec. 185 (a). Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

* * *

"Sec. 187 (b). Whoever shall be injured in his business or property by reason of any violation of subsection (a) [violations of 29 U. S. C. 158 (b) (4)] may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

APPENDIX B

TABLE OF 89 DAMAGE SUITS FOR ALLEGED INTERFERENCE WITH THE RIGHT OF EMPLOYEES TO WORK PENDING AGAINST UNIONS IN ALABAMA

The following is a partial list of damage suits pending against unions in the State of Alabama alone. No attempt has been made to gather cases from other states or to exhaust all cases pending in Alabama. Decision and further proceedings in all of these cases, except the last twenty-three, are being held in abeyance pending decision by the Court of the Russell case. Unless otherwise indicated the sole basis of each of the listed actions is an alleged interference by concerted activity with the right of employees to work and no property damages or personal injuries are alleged. Each action claims punitive damages.

1. *Burl McLemore v. United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, et al.*, #6150 in the Circuit Court of Morgan County, claimed $50,000, verdict and judgment of $8,000 reversed for improper argument of plaintiff's counsel.

2. *James W. Thompson v. Same*, #6151, in Circuit Court of Morgan County, claimed $50,000, appeal from $10,000 verdict and judgment pending in Supreme Court of Alabama.

3. *N. A. Palmer v. Same*, #6152, in the Circuit Court of Morgan County, claimed $50,000, appeal from $18,450 verdict and judgment pending in Supreme Court of Alabama.

4. *Lloyd E. McAbee v. Same*, #6153 in Circuit Court of Morgan County, claims $50,000.

5. *Tommie F. Breeding v. Same*, #6154 in Circuit Court of Morgan County, claims $50,000.

6. *David G. Puckett v. Same*, #6155 in Circuit Court of Morgan County, claims $50,000.

7. *Comer T. Jinkins v. Same*, #6156 in Circuit Court of Morgan County, claims $50,000.

8. *Joseph E. Richardson v. Same*, #6157 in Circuit Court of Morgan County, claims $50,000.

9. *Cois E. Woodard v. Same*, #6158 in Circuit Court of Morgan County, claims $50,000.

10. *Millard E. Green v. Same*, #6159, in Circuit Court of Morgan County, claims $50,000.

11. *James C. Hughes v. Same*, #6160 in Circuit Court of Morgan County, claims $50,000.

12. *James C. Dillehay v. Same*, #6161, in Circuit Court of Morgan County, claims $50,000.

13. *James T. Kirby v. Same*, #6162, in Circuit Court of Morgan County, claims $50,000.

14. *Cloyce Frost v. Same*, #6163, in Circuit Court of Morgan County, claims $50,000.

15. *E. L. Thompson, Jr. v. Same*, #6164, in Circuit Court of Morgan County, claims $50,000.

16. *J. A. Glasscock, Jr. v. Same*, #6165, in Circuit Court of Morgan County, claims $50,000.

17. *Hoyt T. Penn v. Same*, #6166, in Circuit Court of Morgan County, claims $50,000.

18. *Spencer Weinman v. Same*, #6167, in Circuit Court of Morgan County, claims $50,000.

19. *Joseph J. Hightower v. Same*, #6166, in Circuit Court of Morgan County, claims $50,000.

20. *A. A. Kilpatrick v. Same*, #6169, in Circuit Court of Morgan County, claims $50,000.

21. *Charles E. Kirk v. Same*, #6170, in Circuit Court of Morgan County, claims $50,000. Plaintiff now deceased.

22. *Richard W. Penn v. Same*, #6171, in Circuit Court of Morgan County, claims $50,000.

23. *Robert C. Russell v. Same*, #6172, in Circuit Court of Morgan County, claims $50,000.

24. *T. H. Abercrombie v. Same*, #6173, in Circuit Court of Morgan County, claims $50,000.

25. *James H. Tanner v. Same*, #6174, in Circuit Court of Morgan County, claims $50,000.

26. *Charles E. Carroll v. Same*, #6175, in Circuit Court of Morgan County, claims $50,000.

27. *Ordell T. Garvey v. Same*, #6176, in Circuit Court of Morgan County, claims $50,000.

28. *A. R. Barran v. Same*, #6177, in Circuit Court of Morgan County, claims $50,000.

29. *Russell L. Woodard v. Same*, #6178, in Circuit Court of Morgan County, claims $50,000.

30. *Willie J. Hill v. Textile Workers Union of America, AFL-CIO, et al.*, #6328, in Circuit Court of Madison County, claims $10,000.

31. *Grace L. McCoy v. Same*, #6329, in Circuit Court of Madison County, claims $10,000.

32. *Claude Mahathey v. Same*, #6330, in Circuit Court of Madison County, claims $10,000.

33. *Ruby Carroll v. Same*, #6331, in Circuit Court of Madison County, claims $10,000.

34. *Mamie L. Schneltzer v. Same*, #6332, in Circuit Court of Madison County, claims $10,000.

35. *William T. Schneltzer v. Same*, #6333, in Circuit Court of Madison County, claims $10,000.

36. *Janet Parker v. Same*, #6334, in Circuit Court of Madison County, claims $10,000.

37. *Sam Adkins v. Same*, #6335, in Circuit Court of Madison County, claims $10,000.

38. *Frank Brown v. Same*, #6336, in Circuit Court of Madison County, claims $10,000.

39. *Albert R. Tanner v. Same*, #6346, in Circuit Court of Madison County, claims $10,000.

40. *Pauline McDougal v. Same*, #6347, in Circuit Court of Madison County, claims $10,000.

41. *Clarsie J. Ikard v. Same*, #6352, in Circuit Court of Madison County, claims $10,000.

42. *James A. Lang v. Same*, #6353, in Circuit Court of Madison County, claims $10,000.

43. *Billy M. Lang v. Same*, #6354, in Circuit Court of Madison County, claims $10,000.

44. *Carl S. Bowen v. Same*, #6364, in Circuit Court of Madison County, claims $10,000.

45. *Frank Wilson Lang v. Same*, #6365 in Circuit Court of Madison County, claims $10,000.

46. *Ruby W. Bowen v. Same*, #6366, in Circuit Court of Madison County, claims $10,000.

47. *Elizabeth I. Walker v. Same*, #6370, in Circuit Court of Madison County, claims $10,000.

48. *John W. Walker v. Same*, #6399, in Circuit Court of Madison County, claims $10,000.

49. *William Arthur Taylor v. International Brotherhood of Teamsters, AFL-CIO, et al.*, #1243, in the Circuit Court of Calhoun County, claims $50,000 for interference with work. Also alleges a physical assault.

50. *J. M. Field v. Same*, #1246 in Circuit Court of Calhoun County, claims $10,000.

51. *E. H. Heferly v. Same*, #1247 in Circuit Court of Calhoun County, claims $10,000.

52. *James C. Johnson v. Same*, #1633 in Circuit Court of Calhoun County, claims $50,000 for interference with work. Also alleges a physical assault.

53. *Dewitt Doss v. Same*, #1634 in Circuit Court of Calhoun County, claims $50,000 for interference with work. Also alleges a physical assault.

54. *Don S. Eldridge v. International Association of Machinists, AFL-CIO, et al.*, #9965 in the Circuit Court of Talledega County. Claims $25,000 punitive damages for interference with right to work during *five* days. Also alleges a several claim of $500 for damages to an automobile.

55. *H. D. Mitchell v. Same*, #9966 in the Circuit Court of Talladega County. Claims $25,000. Identical to above.

56. *Joe. E. Lucia v. Same*, #9967 in the Circuit Court of Talladega County. Claims $25,000. Identical to above.

57. *James T. Tyler v. Same*, #9968 in the Circuit Court of Talladega County. Claims $25,000. Identical to the above.

58. *Claude Haga v. Same*, #9969 in the Circuit Court of Talladega County. Claims $25,000. Identical to above.

59. *W. M. Sirley v. Same*, #9970 in the Circuit Court of Talladega County. Claims $25,000. Identical to above.

60. *George Ratliff v. Same*, #9971 in the Circuit Court of Talladega County. Claims $25,000. Identical to the above.

61. *H. W. Golden v. Same*, #9972, in the Circuit Court of Talladega County. Claims $25,000. Identical to above.

62. *W. O. Hurd v. Same*, #9973 in the Circuit Court of Talladega County. Claims $25,000. Identical to the above.

63. *T. D. Newman v. Same*, #9974, in the Circuit Court of Talladega County. Claims $25,000. Identical to above.

64. *James F. Bridges v. Same*, #9975 in the Circuit Court of Talladega County. Claims $25,000. Identical to the above.

65. *Sam S. Bates v. Same*, #9976 in the Circuit Court of Talladega County. Claims $25,000. Identical to above.

66. *George Popwell v. Same*, #9977, in the Circuit Court of Talladega County. Claims $25,000. Identical to above.

67-89. *Clifford P. Hargrove, Sam L. Manley, et al. v. United Steelworkers of America, AFL-CIO, et al.*, in Equity in the Morgan County Court for Morgan County, appeal pending in Supreme Court of Alabama, 8th Division 696. Suit by 23 individuals for injunction and for damages for interference with right to work during a strike. No physical injury to person or property involved. Norman W. Harris, Attorney for plaintiffs.

APPENDIX C

BRIEF OF THE EVIDENCE PRESENTED UPON THE TRIAL

A. Events Prior to Beginning of Strike

Following certification (R. 132-139) of the Union as the representative of the hourly employees of Calumet and Hecla, meetings were held from May 21, 1951 until July 17, 1951, several times each week in an attempt to reach agreement upon a collective bargaining contract (R. 503). Frank W. Oakes, Personnel and Industrial Relations Manager was the spokesman for the Company in these meetings. The major issue in the negotiations was the Union's demand for arbitration in the grievance procedure to settle disputes (R. 504). The Company took the position that it would not agree to arbitration of contractual disputes under any circumstances (R. 398).

The evidence demonstrates that the Calumet and Hecla Decatur plant is a continuous processing line operation, all of the departments of which, both maintenance and production, are highly integrated and interdependent (R. 45-46, 56, 248-249, 340).

In two meetings of employees on July 17, 1951, employees estimated at over four hundred by various of the witnesses (R. 285, 485, 489, 504, 507, 546), out of the employer's total three-shift complement of slightly over five hundred hourly paid employees (R. 34), voted almost unanimously to go on strike (R. 505, 507). Following the first meeting of employees, a meeting was held between the representatives of the Company and the representatives of the employees at three o'clock, P. M. (R. 505-506). The employees' representatives advised the Company representatives, who included Mr. Oakes, Mr. Kromer and

Mr. Robson, that the second shift employees had voted to strike and that a meeting was to be held later of the employees of the first and third shifts who would probably vote likewise, in which event a picket line would be established the next morning (R. 286, 287, 486, 487, 506).

The Union representatives asked Mr. Oakes if the Company needed any maintenance men or key men to protect the machinery and equipment of the plant for safety or underwriting reasons, to which Oakes replied: "No, we won't need any hourly rated employees. The plant will be closed to all hourly employees and our salaried employees are fully capable of taking care of any situation that might arise inside the plant" (R. 287). The reason given by Oakes was that hourly employees had to work together after the strike and the Company did not want any hard feelings, therefore, the Company was going to close the plant down to all hourly employees (R. 487, 506). Mr. Robson, the Plant Engineer, advised the meeting that employees of an outside contractor engaged in construction work on the premises would not enter the plant during the strike (R. 487, 506).

Thereafter at a meeting of the first and third shifts, at which approximately two hundred and fifty employees were in attendance (R. 489, 507) these matters were reported to the employees. The employees voted unanimously to strike and Union Regional Director Starling made a talk to the employees assembled, and advised them that they must conduct themselves as gentlemen on the picket line, and that community support of the strike was important (R. 398-399, 401). Starling advised both meetings that no drinking would be permitted at or near the picket line (R. 399, 401). Starling urged all employees to be present at the picket line the following morning so that picket captains could be selected and picketing shifts and assignments worked out, and so that it would be unnecessary for all of the employees to come to the picket line except upon scheduled occasions (R. 401). Starling testified that the arrangement of picket schedules in a strike of so many employees was a difficult job which required about a week to complete (R. 407-408), and that

after the schedules were arranged fewer pickets were present on the picket line than previously (R. 402).

These facts were testified to by five members of the employee's negotiating committee and by Mr. Starling. Mr. Frank W. Oakes, Industrial Relations Manager for the Employer, testified that the Union committee advised him management and salaried employees would be admitted to the plant in the event of the strike, and that Union Representative Volk (Petitioner) stated: "At least at the start," and that the Union would keep the strike on a high plane (R. 599). Mr. Oakes stated that the Company was not advised as to the exact time at which the strike would begin (R. 599). Oakes did not deny that the Company refused the offer of hourly employees to work, but stated that he did not use the specific language attributed to him by some of the Union committee that "the company would lock its gates against hourly employees and not admit them to the plant" (R. 599).

B. Events of July 18, 1951 and the Plaintiff's Evidence

Respondent Russell was an electrician hired and paid at an hourly rate of $1.75 (R. 18). He did not work from the beginning of the strike, July 18, 1951, until August 22, 1951, when the plant reopened, a period of about five weeks (R. 36).

Ralph Webster, an employee, testified for the defendants that on the afternoon of July 17 he advised the plaintiff that the second shift had voted to strike the following morning and that Mr. Oakes had refused an offer of standby personnel and had told the employees' committee that the Company was going to close the gates to hourly employees, but that salaried employees would work (R. 526-527). Russell replied to him that the empoyees woud never get a contract (R. 527). Employee Webster arrived at the picket line about six a. m. on the morning of July 18, when the strike was to begin and was requested by the police to help keep the road clear because of fire hazard. Webster stationed himself at the intersection of Grant and Railroad Avenues some distance from the picket line and re-

quested automobiles as they arrived to please park off the pavement, and advised the employees that "the gate was closed to hourly rated employees, but the salaried employees could go through the picket line if they would stop and identify themselves" (R. 532-533). Russell arrived and was spoken to by Webster. Webster testified that he told Russell: "Paul, we have got a picket line up like I told you we would have. The plant is closed to hourly rated employees and if you are going to park please park off the highway" (R. 534).

Russell testified that Webster said to him: "You might as well go on home today; we don't need you today. You can't go in" (R. 23).

Both Webster and Russell testified that Russell replied: "Go to hell." Then he drove on toward the picket line (R. 23, 534).

Employee Howard Hovis (defendant below) spoke to Russell some two hundred yards from the plant entrance, but Russell ignored his signal and continued driving toward the entrance (R. 24). About fifty yards further on at a railroad crossing (R. 25) [See Plaintiff's Exhibits 1, 2 and 3 photographs identified (R. 20-21) and admitted in evidence (R. 22)] twenty-five or thirty pickets were walking in a circle across the street (R. 26). The public street ends at this point and a sign says: "End of Public Street—Private Property." A Company owned road continues on to the plant gates (R. 21).

Russell testified that when he got to within twenty or thirty feet of the picket line he could feel "some drag on his car" and stopped (R. 27); that a man who later identified himself as Regional Director of the Union, asked him if he was hourly or salaried, to which Russell replied: "What difference does it make?" (R. 25). The man replied that if Russell was salaried he could go in and that if he was hourly he could not (R. 25). According to Russell, Howard Hovis said: "Paul Russell, I knew you would be one of the kind that would try to cross this picket line" (R. 72), and that the first man told him: "You should have more respect for your fellow workers than to try to break through a picket line" (R. 28). Russell testified that

when he first arrived cries came from a group near the picket line: "He is just a red apple electrician. He can't get in" (R. 30). Russell estimated that there were about fifty people on the left hand side of the road and about one hundred fifty on the right hand side of the road in addition to the pickets, and stated that persons from the larger group exchanged places with pickets from time to time (R. 29, 30). While Russell was stopped near the picket line several cars passed on into the plant. A bus came up behind his car and the Union official advised Russell that he was blocking traffic and that he would have to move, to which Russell replied that he had as much right to be in the street as they had, and that if pickets would open up in front nobody would be blocking traffic, and Russell refused to move his automobile (R. 31). The Union official motioned for the bus to pull around Russell and it entered through the picket line. Russell started his car forward behind the bus and the picket line closed back in front of him and Russell stopped his automobile. At this time Russell testified cries came from unidentified persons in the vicinity as follows: "He's going to try to get through." "Looks like we are going to have to turn him over to get rid of him." "Turn him over" (R. 31). Some one in the assembled group said: "Shut up" (R. 554). Russell remained in his car for an hour and a half or two hours until about 9:45 when he backed his car out and drove home (R. 32). His car was not damaged and he was not attacked or touched by anyone (R. 81-82).

Union Regional Director Starling testified that he talked to Russell after Russell had ben stopped in his automobile at the picket line for a considerable period of time, and that he advised Russell that the Union had met with the Company the day before and had been advised by the Company that if and when the strike was called that the plant would be closed to all hourly rated employees (R. 403). Starling stated that he told Russell that he, being a worker in the plant, should support the Union's demands in the dispute and that he hoped he would (R. 403-404).

The plaintiff placed on the witness stand twenty-three employees who testified that they came to the plant on the morning of July 18, 1951.[1] These twenty-three employees testified that fifteen other employees accompanied them. Of the thirty-eight employees, twenty-six brought their lunch with them. Of the thirty-eight, most were shown to have knowledge when they left home that the picket line would be established on that morning. Of the twenty-three witnesses, nine testified that they were plaintiffs in cases similar to that of the Respondent Russell.[2] All of these employees were shown to have approached only to within from fifty to two hundred feet of the picket line. Only one, Burl McLemore, was shown to have made any effort to cross the picket line, and most were shown to have parked their cars with no apparent thought of attempting to cross the picket line.

Burl McLemore testified that he approached to within a few feet of the picket line, which did not open for him to pass. Pete Runager, a member of the employees' negotiating committee, told him: "Mac, we don't want to have no trouble this morning. The best thing for you to do is back up and turn around. You are not going to work this morning." Following which McLemore backed his car around and got out of the car and attempted to walk around the picket line, when Runager again interceded, saying: "I don't want to have any trouble with you this morning." To which McLemore replied that his coveralls got awfully wet on the preceding day and that he feared they would

---

[1] Burl McLemore (R. 92); A. M. Huskey (R. 186); Clifford Carnell (R. 188); Kenneth Johnson (R. 191); G. W. Pepper (R. 194); M. D. Whitworth (R. 198); Lloyd H. Barnes (R. 201); James D. Bagwell (R. 206); James Dillehay (R. 207); Roy D. Free (R. 208); A. M. Howell (R. 209); James C. Hughes (R. 211); Comer Junkins (R. 212); James Kirby (R. 216); N. A. Palmer (R. 219); D. E. Taylor (R. 221); James W. Thompson (R. 224); Thomas E. Todd (R. 226); Joseph E. Richardson (R. 231); Bruce Ross (R. 234)); Harold Whitmire (R. 235); Jackson Waldrop (R. 236); C. E. Woodard (R. 238).

[2] Burl McLemore, James Dillehay, James C. Hughes, Comer Junkins, James Kirby, N. A. Palmer, James W. Thompson, Joseph E. Richardson and C. E. Woodard.

ruin, and Runager stated: "Quick as we get organized I will call you and let you go through and get them" (R. 94-95). On the following Friday, July 20, 1951, Runager did call McLemore as promised (R. 97).

William D. Schelbe, a management employee of the Company, testified that when he refused to show his identification card in the vicinity of the picket line, some unidentified person threatened to turn his car over, following which he showed his management identification card and was admitted to the plant (R. 158-160). When Schelbe entered the plant he was told by Mr. Oakes that there was an agreement between the Company and the Union that management representatives would show their management identification cards at the picket line and be admitted (R. 161).

N. F. Webster, a plant guard, testified that he was on duty on the morning the strike began and that he did not receive any orders or instructions not to admit employees to the plant (R. 276-277). Webster testified that before the strike, when the Company planned a shut-down of the plant, or a cessation or stoppage of work, it was the custom of the Company to post a notice several days in advance announcing the shut-down on the Company bulletin Board and that on the occasion of the strike no notice was posted (R. 277).

C. Admissions of Plaintiff and Defendants' Evidence

At the beginning of the strike over four hundred of the five hundred odd hourly employees of the Company belonged to the Union (R. 305, 322). At the beginning of the strike nearly all of these participated in picketing and drew strike benefits (R. 122).

On the morning of July 18, when the strike began, Frank W. Oakes, Industrial Relations Manager stopped at the picket line about 7:30 a. m. (before the plaintiff arrived) and had a conversation with one of the Union officials (R. 509). M. E. Duncan, Howard Hovis and Hoyt Grizzard testified for the defendants that this conversation was had

with M. E. Duncan (R. 360, 493, 509). Mr. Oakes testified that it was had with Mike Volk (Petitioner) (R. 605). Oakes showed his management identification card to Volk, or Duncan, and told him that all salaried employees of the Company would have a similar card on which the numbers would be between two thousand and four thousand. Mr. Oakes advised that this was the way in which salaried employees could be identified at the picket line (R. 493, 509). This message was passed on to the striking employees (R. 493). On this occasion Oakes stated that he appreciated the picket line being orderly and hoped that it would continue (R. 493, 509).

W. D. Schelbe and Jerry Comer, Management officials, testified that Mr. Oakes instructed them to show their cards at the picket line (R. 161-162, 183), and Schelbe stated that Oakes advised him of an agreement between the Company and the Union to this effect (R. 161).

A. J. Babis, Company foreman, testified that it was entirely possible that he issued an instruction to employees under his supervision that hourly employees would not work during the strike and that they would not be admitted to the plant (R. 270). He testified as follows:

> "Q. Did Oakes or other top officials of the Company advise you of the agreement that the Company made with the Union on July 17 that the plant would be closed for the duration of the strike to all hourly paid employees?
>
> A. That the plant wolud be closed—the terminology I am not sure" (R. 272).
>
> * * *
>
> "Q. I will ask you the question again; were you advised of an agreement between the Union committee and the Company that the Company would remain closed for the duration of the strike to all hourly paid employees?
>
> A. I was told there would not be any work because of a discussion between the Company and the Union" (R. 273).

At 7:30 a. m. on the morning of July 18 the Company stopped placing copper billets in the furnace, which was customary when the plant was preparing to close down (R. 340-341). The next shift of employees was not due to arrive until 8 a. m. C. E. Woodard, extrusion press operator, came around and asked helpers on the press if they would stay past their regular quitting time (8 o'clock, a. m.) and finish extruding the billets which were left in the furnace. Employees are asked to "stay over" and finish extruding billets only when the plant operations were being closed down (R. 341). The employees did not stay (R. 343-344). When they left at 8 o'clock a. m. the furnace was approximately half full of heated billets (R. 343). They were extruded by supervisory personnel (R. 250).

Marvin Garth and James H. Burks, janitors, testified that their foreman advised them at 7:50 on the morning of July 18 that they should go home because the plant was going to close down. These employees left the plant about four hours before their regular quitting time (R. 332, 350). These instructions to the janitors were denied by Howard Hughes, their foreman (R. 613).

W. A. Bowling testified that about 6 o'clock, a. m. the morning the strike began he was advised by his foreman that "the gates are going to be locked until this thing is settled" (R. 356).

Millwright foreman, Norman Sparkman, advised Carl Bradshaw before the strike began that only foremen and salaried employees would work during the strike (R. 372).

Clifford Corum testified that his foreman, A. J. Crites, advised him that the plant would be closed during the strike. This conversation occurred several days before the strike (R. 367). Howard Goodlett testified that he was requested by Crites, his foreman, to help sweep up the machine shop just before he went off at 8 o'clock, a. m. on the morning of July 18, 1951 because the machine shop was going to be closed for a few days. It was not customary for machinists to clean up the entire shop (R. 388). These instructions were denied by Foreman Crites (R. 608-609).

A. J. Collum, a non-union employee, testified that the morning the strike began Paul Russell was the only employee he saw who attempted to cross the picket line (R. 442).

Paul Russell went back to the vicinity of the picket line on two occasions between July 18 and August 22, 1951 (the day on which he resumed work) to "see what the situation was" (R. 34). One of these occasions was about a week after the beginning of the strike and the other was on the night before the plant reopened on August 22. On both occasions the picket line was present (R. 35). After he left the picket line on July 18, 1951 Russell did not get in touch with any representatives of the Company to find out whether or not his services were desired. He "assumed there was no work" (R. 48). No representative of the Company contacted Russell to tell him that work was available for him during the strike (R. 48-49). When he left the picket line on July 18 Russell "got together" with some other employees for the purpose of organizing a "back-to-work" movement (R. 50-51). Russell and employees Kirby and McCoy initiated the idea of a petition addressed to the Company requesting that it reopen. The first petitions initiated were worded to the effect: "If the company will reopen the gates to the people, we will cross the picket line and return to work" (R. 52). These petitions were carired to Respondent's attorney and Russell advised his attorney that it would take from two hundred to two hundred and fifty employees to operate the plant and his attorney advised that at least this number would have to sign the petition before the Company would agree to reopen the plant (R. 56). During the five weeks that the plant did not operate Russell spent some part of each day procuring signatures to petitions to the Company. The revised petition prepared by his attorney was as follows:

> "The undersigned who were employed by you at the time of the work stoppage caused by the present strike do hereby request that you reopen your plant for work and we do hereby individually propose to resume work for you on the same terms and conditions

of employment as were in effect at the time of the work stoppage" (R. 85).

At back-to-work meetings of employees Mr. Harris addressed the employees present and advised that they would have to get enough people willing to go back who could operate the plant before the Company would reconsider reopening (R. 55).

Most of the plaintiff's witnesses testified that the petition was a petition to get the Company to reopen the gates, or was "asking for jobs where we could go to work."[3]

James Kirby was of the opinion that the Company would agree to reopen if half of the over five hundred employees would sign (R. 218). Comer Junkins advised A. J. Collum, likewise (R. 444).

The petition was submitted to the Company when approximately two hundred forty signatures had been obtained. The petition (Plaintiff's physical Exhibit 12) was identified and admitted into evidence (R. 568). The accompanying letter from Attorney Harris urges upon the Company its legal right to reopen the plant.

Upon receipt of the petition on August 20, 1951 the Company wrote a letter to each employee advising them that the plant would reopen on August 22, 1951 (Defendants' Exhibit 1, R. 49). The Company also ran a full page newspaper advertisement advising all employees that the Company would reopen on August 22 (R. 45).

The plant resumed operations on August 22, 1951 and Russell returned to work in the fourth car in a convoy of automobiles as shown by Plaintiff's moving picture exhibit (R. 89). Approximately one hundred highway patrolmen and local police officers were on hand at the reopening of the plant (R. 147-148). When the automobiles approached

---

[3] Kenneth Johnson (R. 193); G. W. Pepper (R. 197); M. D. Whitworth (R. 201); L. H. Barnes (R. 203); Roy D. Free (R. 209); Comer Junkins (R. 214); James Kirby (R. 217-218); N. A. Palmer (R. 221); D. E. Taylor (R. 222); James W. Thompson (R. 226); C. E. Woodard (R. 240); A. J. Collum (R. 444).

the picket line the highway patrolmen motioned for the picket line to stand aside and the automobiles came on through (R. 149).

Following his return to work on August 22, 1951 Russell has continued to work without interruption or molestation (R. 67).

Russell "was bitterly opposed to unions" (R. 74). When he returned to work he organized an industrial employees club (R. 67). The purpose of the club was "carrying on the employer-employee functions without the intervention of any union" (R. 68, 69). The club distributed literature attacking unions published by the Committee for Constitutional Government (R. 88). This literature was received by Russell from the Decatur Chamber of Commerce (R. 71) of which he, an hourly paid electrician, was a member (R. 68). Russell also belonged to the Decatur Country Club at which he socialized with management officials of the Company (R. 72, 73). Russell testified before a committee of Alabama State Legislature in favor of the Alabama "Right to Work" bill (R. 74, 90). After the return to work Russell petitioned the National Labor Relations Board for an election to decertify the Union as the collective bargaining representative of the employees (R. 74). Russell and C. E. Woodard, plaintiff in an identical law suit, got the idea of law suits against the Union from a newspaper clipping (R. 239). Russell solicited other employees to file similar damage suits (R. 75). His object was to get as many people as possible to file damage suits (R. 75-76).

Answers of the defendant union to interrogatories propounded by the plaintiff were introduced in evidence by the plaintiff. The interrogatory answers showed that the Union was certified as the representative for the employees by the National Labor Relations Board (R. 132-139). Interrogatory answers further show that the employees of the Company voted to authorize the strike which was sanctioned and financed by the Union (R. 120). The answers further state that persons desiring to enter the plant "were advised that officials of the plant had requested that all persons be advised that the plant was closed and that said persons be

told that they could enter only for the purpose of getting tools, transacting business with the credit union, going to the company dispensary, making sales to the company, and other purposes dissociated from productive work in the plant" (R. 127-128).

D. The Dinky Incident

On August 20, 1951, the day it was announced that the plant would be reopened by newspaper advertisement and letters to all employees, the Company dispatched its small "dinky" locomotive from the plant to a point near the picket line to pick up five railroad cars of copper ingots, which had been left by the railroad at the property line (R. 251-252). Pickets gathered in front of the dinky engine and obstructed its progress (R. 254). Ralph Webster, one of the defendants, took the keys from the engine and threw them out of the cab (R. 255). The Chief of Police determined that the engine could not accomplish its mission without violence and orders were given to take the dinky back into the yard of the plant. It was discovered that the fan belt had been cut, the distributor head removed, the air hose cut and the wheels and brakes greased with cup grease (R. 257, 262). Paul Russell was not present on this occasion (R. 258, 266).

None of the Union officials were in the City of Decatur at the time this incident occurred (R. 294). Olen Drake, who was present at the time, testified that the Chief of Police asked him: "What steps are you going to take", and he said: "I don't know. These boys are new at this. We don't know. But we wish what you would do until we find out more about it, forget this thing until our men (Union representatives) come in, and we can settle this thing without any trouble." "We don't know anything to do except wait until they come in." Shortly, the Chief of Police, advised Drake that this would be done (R. 294).

Upon his arrival in Decatur, M. E. Duncan, Assistant Regional Director of the Union, told Olen Drake that pickets could not forcibly stop an engine from coming out to get copper (R. 511). On that day, August 20, 1951, Mr.

Duncan for the first time during the strike made arrangements for the Union to furnish bail bonds for employees who might be arrested (R. 520). This was done when Duncan learned of the newspaper advertisement concerning the reopening of the plant (R. 521).

APPENDIX D

DISSENT OF BOARD MEMBER REYNOLDS IN THE MATTER OF UNITED MINEWORKERS OF OF AMERICA, 92 NLRB 916, 920:

"Member Reynolds, dissenting in part and concurring specially:

"I disagree with the majority opinion insofar as it dismisses the complaint with respect to Ed J. Morgan. Like the Trial Examiner, I believe it inferable on the record in this case 'that Morgan, as District President, was well aware of, acquiesced in, sanctioned, ratified, and approved a plan in its origin and execution * * *.' In my opinion, therefore, Morgan should not be exculpated for unfair labor practices committed herein.

"With respect to the remedy, I concur in the majority opinion insofar as it broadens the scope of the order recommended by the Trial Examiner by ordering the Respondents to cease and desist from restraining and coercing employees of the Employers, or any other employees, engaged in mining operations within the geographic limits of jurisdiction of District 23. I would, however, further broaden the remedial order by ordering the Respondents to reimburse the employees of the Employers for the loss of any earnings suffered by such employees because of the Respondents' violation of Section 8 (b) (1) (A).

"In this case, as in *Colonial Hardwood Flooring Company, Inc.*, 84 NLRB 563, employees were barred from their jobs and therefore deprived of their earnings by reason of illegal coercive activities on the part of respondent unions. In the *Colonial Hardwood* case, we denied the request made by the company for an order indemnifying employees for

any loss of earnings they may have suffered because of unfair labor practices on the part of the union and its agents. We there expressed the belief that the Board was without power to take such a step in the absence of an express mandate from Congress. Despite any participation in that unanimous determination by the Board, I now consider and conclude that that decision was erroneous. A comprehensive study of (1) the Supreme Court decisions interpreting Section 10 (c) of the Act prior to its amendment, (2) the language of Section 10 (c) of the Act, as amended, and (3) the legislative history of the 1947 amendment of the Act, leads me to this conclusion.

"Section 10 (c) so far as material herein reads:

> "'If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him.*' (Emphasis indicates the 1947 amendment.)

"It should be noted that the proviso amending Section 10 (c) is, like the participial phrase 'including reinstatement of employees with or without back pay,' descriptive of the broad grant of power given the Board. Prior to the amendment of the Act, the Supreme Court had occasion in several cases to discuss the meaning of the participial phrase. In *Phelps Dodge Corporation v. N. L. R. B.*, 313 U. S. 177, the Board's order required the company to hire and to make whole for their loss of earnings those persons whom the company had discriminatorily refused to hire. The company contended that since the persons in question

had never been employed by the company, the Board under Section 10 (c) had no power to issue its order, for the Board's power was, in the company's view, limited to ordering 'reinstatement * * * with * * * back pay.' The Court rejected this view, holding that the Board's remedial power was not limited by the language 'including reinstatement of employees with or without back pay.' The Court stated:

> "To differentiate between discrimination in denying employment and in terminating it, would be a differentiation not only without substance but in defiance of that against which the prohibition of discrimination is directed.
>
> "But, we are told, this is precisely the differentiation Congress has made. It has done so, the argument runs, by not directing the Board 'to take such affirmative action as will effectuate the policies of this Act,' *simpliciter*, but, instead, by empowering the Board 'to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.' To attribute such a function to the participial phrase introduced by 'including' is to shrivel a versatile principle to an illustrative application. We find no justification whatever for attributing to Congress such a casuistic withdrawal of authority which, but for the illustration, it clearly has given the Board. The word 'including' does not lend itself to such destructive significance.

"This language, beyond peradventure of a doubt, affirmed the power of the Board to take whatever affirmative action it believes will effectuate the policies of the Act, without imposing thereon any limitation by reason of the illustrative example referring to reinstatement.[6] As the Section 10 (c)

---

[6] The Supreme Court restated this interpretation of Section 10 (c) in *Virginia Electric and Power Company v. NLRB*, 319 U. S. 533. In affirming the order of the Board compelling the Respondent company to reimburse employees in the sum equivalent to the amount of checked-off dues the Court stated:

(Continued on next page)

proviso is likewise merely illustrative of the Board's power, it follows that the proviso does not delimit the Board's remedial power. I am therefore of the opinion that the limitation which the Board placed on its remedial power in the *Colonial Hardwood* case was not warranted, and that contrary to our holding in that case the Board may award back pay in some situations where labor organizations cause employees to lose pay by unlawfully interfering with their right of ingress to their place of employment. Moreover, upon reconsideration I find no merit to the distinction made in the *Colonial Hardwood* case with respect to an award of back pay in this situation and an award of back pay in other cases since I consider interference with an employee's right of ingress to be tantamount to 'interference with the tenure or terms of the employment relationship between him and his employer in the ordinary case in which back pay is awarded.'

"The controlling court precedent with reference to the interpretation of Section 10(c) should obviate the necessity of resort to the legislative history of the amendment to Section 10 (c). However, as the legislative history was consulted in the *Colonial Hardwood* decision, it may be appropriate to reexamine that history.

"Both the House and Senate bills as passed by the respective chambers contained amendments to Section 10 (c).

(Continued from preceding page)

"'Section 10 (c) of the Act authorized the Board to require persons found engaged or engaging in unfair labor practices 'to take such affirmative action including reinstatement of employees with or without back pay as will effectuate the policies of this Act.'

"'The declared policy of the Act in Section 1 is to prevent, by encouraging and protecting collective bargaining and full freedom of association for workers, the costly dislocation and interruption of the flow of commerce caused by unnecessary industrial strife and unrest. Within this limit the Board has wide discretion in ordering affirmative action; its power is not limited to the illustrative example of one type of permissible affirmative order, namely, reinstatement with or without back pay. The particular means by which the effects of unfair labor practices are to be expunged are matters "for the Board not the Courts to determine".'".

The Senate Bill (S. 1126) contained the amendment which was finally enacted into law. The purpose of the amendment is explained in Senate Report 105 (80th Cong., 1st Sess.) as follows:

> " 'This subsection is amended by the proviso in two[7] respects: (1) Back pay may be required of either the employer or the labor organization, depending upon which is responsible for the discrimination suffered by the employee.'

"It thus appears that the Senate Committee submitting the report viewed the proviso as emphasizing the power of the Board to assert responsibility, in cases of discrimination, equally with respect to both employers and labor organizations.[8]

The House Bill (H. R. 3020) contained an amendment[9] of Section 10 (c), the purpose of which was explained in House Report 245 (80th Cong., 1st Sess.) as follows:

---

[7] The second respect in which Section 10 (c) was amended is not material to this case.

[8] In debates on the bill in the Senate, the only reference to the 10 (c) amendment was made by Senator Hatch who remarked:

> "The amendments of Section 10 (c) authorizing the Board to charge unions with back pay in the event the union is guilty of an unfair labor practice, seem fair enough, although I anticipate some difficulty on the Board's part in assigning responsibility for the initiation of strikes in many cases. I foresee that they may be faced with many 'chicken or egg' decisions."

[9] The House Bill amendment of Section 10 (c) provided that:

> "The Board shall states its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take affirmative action requested in the complaint (which in the case of unfair labor practices under Section 8 (a) may include reinstatement of employees with or without back pay, and in the case of unfair labor practices under Section 8 (b) or 8 (c) may include deprivation of rights under this Act for a period not exceeding one year) as will effectuate the policies of this Act.

> "'(The amendment), in language like that which is applicable to employers who violate Section 8 (a), authorizes the Board to order unions and their adherents who violate Section 8 (b) to cease and desist from their unfair labor practices and to take such affirmative action as will effectuate the policies of the Act. The Board is authorized to deprive them of rights under the Act for a period of not more than 1 year. *Under this clause the Board may also require a union to reimburse an employee whom it causes to lose pay the amount that he loses.*' (Emphasis supplied.)

"As the House amendment contained no specific language with respect to reimbursement by unions, this Report makes it clear that such remedy was contemplated under the general grant of power to the Board to take affirmative action 'as will effectuate the policies' of the Act.

"S. 1126 was reported out of conference as H. R. 3020. The House Conference Report on this bill contained the following explanation for the adoption of the Senate bill and the rejection of the House bill:

> "In Section 10 (c) both the House bill and the Senate amendment incorporated language with respect to the Board's remedial orders in cases of unfair labor practices by labor organizations. The House bill provided that, in addition to ordering respondents to cease and desist from unfair labor practices, the Board could order employers to take affirmative action to effectuate the purposes of the Act, including reinstatement with back pay for employees (a provision appearing in the present act), and could also order representatives and employees to take affirmative action, and deprive them of rights under the Act for not more than 1 year. The Senate amendment did not contain the provision specifically authorizing the Board to deprive representatives and employees who engage in unfair practices of rights under the act, but did contain a provision authorizing the Board to require a labor organization to pay back pay to employees when the labor organization was responsible for the discrimination suffered by the employees.

"The House bill, by implication, limited the Board in its choice of remedial orders in cases of unfair labor practices by representatives not involving back pay, by specifying but one type of order that the Board might issue. The conference agreement therefore omits this provision of the House bill. As previously stated, employees are subject to the prohibitions of Section 8 (b) only when they act as agents of representatives, but in these and other cases, when they are disciplined or discharged for engaging in or supporting unfair practices, they do not have immunity under Section 7. The language in the Senate amendment without which the Board could not require unions to pay back pay when they induced an employer to discriminate against an employee is included in the conference agreement.

"The House amendment was rejected because of a fear that it might have limited the Board's remedial power. In view of the expressed desire not to encumber this power, the last sentence from the quotation of the House Conference Report is an anomaly. It alone in the legislative history tends to support the Board's decision in the *Colonial Hardwood* case. The sentence is however inconsistent with the purport of the separate reports of the House and Senate on the bills of those chambers, as well as being inconsistent with the tenor of the bulk of the House Conference Report. Moreover, it suggests that the remedial orders usable by the Board are to be limited to those specifically enumerated. This suggestion stands as an isolated inconsistency in the legislative history and is oblivious to the contrary Supreme Court precedent alluded to above. As it nowhere appears that Congress intended to enumerate the remedial orders available to the Board, or to reverse or modify Court precedents defining the import of Section 10 (c), the Board should not on the basis of an isolated sentence in the legislative history attribute to Congress this intention.

"Furthermore, even if we were to indulge in the assumption that the proviso to Section 10 (c) is the sole source of the Board's power to order labor organizations to indem-

nify employees for loss of pay, it does not follow that the power is circumscribed by the particular segment of the House Conference Report. By stating that without the 10 (c) proviso the Board could not require unions to pay back pay in cases of discrimination, the Report does not state that the Board can use such a remedy only in cases involving discrimination. It does no more than give an illustration of a use of the power being conferred.

"Upon the basis of all the foregoing, I am of the opinion that the proviso to Section 10 (c) is but an illustration of an instance where back pay may be required of a labor organization, and is not therefore definitive of the Board's power to order such a remedy. In this case, the Respondents, through the exercise of illegal coercive tactics which rendered civil authority helpless, caused a temporary hiatus in the tenure of employment of the employees of the employers thereby causing them a loss in pay. Regardless therefore of the issue of whether the Respondents caused or attempted to cause the Employers to discriminate against these employees as defined in Section 8 (b) (2) of the Act, the Respondent should be required to make whole the employees for the loss of pay suffered. Only in this way can the unfair labor practices committed by the Respondents be effectively remedied."